

Appendix B**SUMMARY OF THE COMMENTS MADE REGARDING THE RULE AND THE AGENCY
RESPONSE TO THEM****ARTICLE 19. CONSUMER PROTECTIONS FOR UNAUTHORIZED CHANGES****R14-4-1901 – Definitions****1901.C**

Issue: Qwest Corporation (“Qwest”) comments that the Commission should replace its proposed definition of “Customer” with the Federal Communication Commission’s (“FCC”) definition of “Subscriber” and eliminate the use of the term “Customer” throughout the rule. Qwest believes this will maintain consistency within this rule and between the FCC rules and this rule. Qwest asserts that use of the two definitions within the rule adds to confusion for consumers, telecommunications companies, and regulatory staff.

Staff comments that “Customer” and “Subscriber” are distinct defined terms of the rule and that using both terms in the rules clarifies a Telecommunications Company’s obligations to a Customer, while allowing the company to market and obtain authorization from the Subscriber, who is either the Customer, or its agent.

Analysis: We agree with Staff.

Resolution: No change required.

1901.D

Issue: Qwest comments that the term “Customer Account Freeze” should be replaced with either “Preferred Carrier Freeze,” which the FCC employs, or in the alternative, “Subscriber Freeze.” Qwest states that under the FCC rules, a freeze only limits a change in provider, but this section allows a Subscriber to authorize a stay on any change in services. Qwest also comments that the

1 definition need not include the means of authorization, because the process is outlined in greater
2 detail in section 1909.

3 Staff's comments include a recommendation that this definition be deleted altogether,
4 because the term "Customer Account Freeze" is more fully described in the text of section 1909.A.

5 **Analysis:** The defined term "Customer Account Freeze" is used only in section 1909. The term
6 is described in section 1909.A. In addition, section 1909.D includes the authorization requirements
7 for a Customer Account Freeze. The definition of Customer Account Freeze is therefore not required
8 in this section, and it should be deleted.

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10 **Resolution:** Delete this section and renumber accordingly.

11 **1901.F**

12 **Issue:** Qwest comments that the definition of "Letter of Agency" should also be eliminated
13 from this section because the FCC found no reason to define Letter of Agency and because the
14 definition lacks clarity. Qwest states that the definition lacks clarity because it fails to explain that a
15 Letter of Agency is a written authorization by a Subscriber empowering another person or entity to
16 act on the Subscriber's behalf.

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18 Staff comments that because section 1905.D requires an executing carrier to accept an
19 internet Letter of Agency from a submitting carrier, that Qwest's proposed clarification is not
20 necessary.

21 **Analysis:** We believe that for clarity, the rule requires a definition of this term, and that an
22 expansion of the definition, to include an explanation that a Letter of Agency is a written
23 authorization by a Subscriber authorizing a Telecommunications Company to act on the Subscriber's
24 behalf to change the Subscriber's Telecommunications Company, would increase the clarity of the
25 rule.
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1 **Resolution:** Replace “from a Subscriber for a change in” with “by a Subscriber authorizing a
2 Telecommunications Company to act on the Subscriber’s behalf to change the Subscriber’s”.

3 **1901.G**

4 **Issue:** Cox Arizona Telecom, L.L.C. (“Cox”) commented that the term “Subscriber” should
5 be modified to exclude business customers who receive telecommunications services under a written
6 contract, because the rules may not be appropriate in business service situations where there is a
7 written contract between the Telecommunications Company and the business customer.
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9 Staff points out that services provided to a business customer under contract are likely
10 to already provide proper authorization under the rules, and recommended against adoption of Cox’s
11 proposal.

12 **Analysis:** We agree that contracts with business customers may include the authorization and
13 verification that the rules require.

14 **Resolution:** No change required.
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16 **R14-4-1902 – Purpose and Scope**

17 **Issue:** Qwest comments that this section should be eliminated entirely. Qwest states that to
18 be valid, rules must incorporate more than a purpose statement. Qwest asserts that a purpose
19 statement violates A.R.S. § 41-1001.17, which limits a rule to a statement that actually “interprets or
20 prescribes law or policy, or describes the procedure or practice requirements of an agency.”

21 Staff comments that it disagrees with Qwest’s legal analysis, and asserts that a
22 statement of purpose and scope gives guidance as to how the subsequent rules are to be interpreted.
23 Staff believes that in this respect, section 1902 is more like a definition than the type of statement
24 prohibited by A.R.S. § 41-1001.17. Staff stated that this section could be clarified by adding the
25 phrase “shall be interpreted to” after “rule” at the beginning of each sentence.
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1 **Analysis:** We believe that this section as proposed complies with A.R.S. § 41-1001.17 in that it
2 is a Commission statement of general applicability that prescribes Commission policy. However, we
3 also believe that this section would gain clarity by including certain of Staff's recommended
4 language.

5 **Resolution:** In the first sentence of this section, replace "are intended to" with "shall be interpreted
6 to". In the second sentence of this section, insert "shall be interpreted to" between "rules" and
7 "promote", and replace "by establishing" with "and to establish". In the third sentence of this
8 section, insert "shall be interpreted to" between "rules" and "establish".
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10 **R14-4-1904 – Authorized Telecommunications Company Change Procedures**

11 **1904.C**

12 **Issue:** Qwest comments that this section conflicts with FCC rules because it allows an
13 executing carrier to contact a customer or otherwise verify a change submitted by a carrier.

14 Staff comments that the language of this section is clear that the executing carrier
15 "shall not contact the Subscriber to verify the Subscriber's selection . . ."
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17 **Analysis:** We agree with Staff that this section prohibits an Executing Telecommunications
18 Carrier from contacting the Subscriber to verify the Subscriber's selection, and requires no
19 clarification. We note, however, that this section refers to an Executing Telecommunications
20 Company instead of the defined term "Executing Telecommunications Carrier." This typographical
21 error requires correction.

22 **Resolution:** Replace "Executing Telecommunications Company" with "Executing
23 Telecommunications Carrier". No further change required.
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1904.D

Issue: AT&T comments that the final sentence of this section absolves an Executing Telecommunications Carrier of liability even in instances where the Executing Telecommunications Carrier caused, through its own error, the unauthorized change. AT&T states that such errors have occurred here locally, and that when they occur in the future, they should be remedied or paid for by the carrier executing the change. AT&T comments that the FCC has reached this conclusion. AT&T requested that the final sentence of this section be removed.

Qwest comments that rather than delete the last sentence, that the Commission should instead clarify that the Executing Carrier is absolved of liability only when it receives an Unauthorized Change from another carrier. Qwest states that this will address AT&T's concerns with absolving a carrier of liability for an Unauthorized Change caused by its own error.

Staff comments that shielding the executing carrier is essential to the operation of the rules, and is consistent with the FCC rules. Staff states that the liability limitation in this section applies only when the executing carrier is "processing an Unauthorized Change," and that an executing carrier is not immune if it improperly processes an authorized change submitted by a submitting carrier. Staff believes that the rule should remain as proposed.

This section refers to an "Executing Telecommunications Company" instead of the defined term "Executing Telecommunications Carrier."

Analysis: We agree with Staff. The typographical error requires correction.

Resolution: Replace "Executing Telecommunications Company" with "Executing Telecommunications Carrier". No further change required.

1904.E

Issue: Qwest comments that this section is in conflict with FCC rules that require a company offering more than one type of service to obtain separate authorizations. Qwest asserts that by expressly permitting authorization on the same contact, this section implies that separate authorizations are not required.

Staff comments that separate authorizations may be given during a single contact, and that to require that a Subscriber go through multiple phone calls in order to change multiple services would be burdensome and unreasonable. In addition, Staff asserts that the FCC has clarified that its rule does not prohibit multiple authorizations in a single contact, and that accordingly, the proposed rules are consistent with the federal rules.

Analysis: For clarity, the word “authorization” should be changed to “authorizations.”

Resolution: Replace “authorization” with “authorizations”.

R14-4-1905 – Verification of Orders for Telecommunications Service**1905.A.1**

Issue: Qwest comments that the FCC allows electronic signature, but that this section “may be interpreted to mean that only an ‘internet enabled authorization with electronic signature’ is permitted.” Qwest asserts that this conflicts with both the Congressional requirements in the Electronic Signatures in Global and National Commerce Act, Section 104(e) and the FCC rules.

Analysis: This section states that the Subscriber’s written authorization includes internet enabled authorization with electronic signature. It clearly does not limit a written authorization to “internet enabled authorization with electronic signature.” Qwest’s comments seem to imply that because this language “may be interpreted” more narrowly than it is written, that it conflicts with the Electronic Signatures in Global and National Commerce Act and FCC rules. We do not agree.

Resolution: No change required.

1905.C

Issue: Cox comments that this rule, which discusses a Letter of Agency combined with a marketing check and the required notice near the endorsement line on the check, should not include a requirement that the required notice be written in any other language which was used at any point in the sales transaction. Cox states that the “other language” requirement is unnecessary in this context given that most such offers do not occur in face-to-face sales transactions.

Allegiance Telecom of Arizona, Inc. (“Allegiance”) comments that this section should be limited to residential customers and not be required in transactions with business customers, stating that the need for bilingual notices arises in the residential market, not the business market, and that the requirement to produce certain notices in both English and Spanish will require significant investment and expense on the part of smaller carriers such as Allegiance.

AT&T requests that carriers have the option of using the language the carrier has chosen to use in marketing to the customer, and recommends that the notice “that the Subscriber authorizes a Telecommunications Company change by signing the check” be required to be written “in both English and Spanish or in the language the carrier has chosen to use” in lieu of in “English and Spanish as well as in any other language which was used at any point in the sales transaction.” AT&T states that it cannot cost-effectively prepare marketing materials in all languages used by all customers.

Qwest concurs with AT&T and in addition, objects to the requirement that notice be written in any language used at any point in the sales transaction, stating that because many Subscribers specify one of the two languages as their language of choice, it is unnecessarily burdensome and costly to require bilingual notice for all Subscribers. Qwest comments that dual language notices may only confuse Subscribers who are unable to read the other language. Qwest believes carriers should have the option to provide notice in the Subscriber’s language of choice, but

1 that if the Commission does not modify this section, that it should clarify that only the material terms
2 and conditions are subject to the dual language requirement. Qwest further comments that the
3 requirement that notice be provided in any language used in the sales transaction will place a serious
4 burden on companies, which can only lead to increased Subscriber costs. Qwest believes that under
5 this section, companies must print notices in any language spoken by the Subscriber, even if the
6 company never responded in that language. Qwest states that the fact that some Native American
7 languages contain no written component also makes this requirement difficult.

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9 Staff recommends against adoption of any proposal to limit the notice to either
10 English, Spanish, or any language used during the transaction, stating that the proposed rule is written
11 to ensure that the Subscriber retains the opportunity to read the notice in the language with which the
12 Subscriber is most comfortable.

13 **Analysis:** Cox may be correct that most offers utilizing a Letter of Agency combined with a
14 marketing check are not used in face-to-face transactions, but, as AT&T points out, it is conceivable
15 that a Letter of Agency and a Marketing Check might be used in conjunction with marketing
16 materials in a language other than English or Spanish. This section simply requires that the notice be
17 provided in that same language, in addition to English and Spanish.

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19 This section does not require marketing materials to be prepared in all languages used
20 by all customers. It does, however, restrict a company's use of a Letter of Agency combined with a
21 marketing check to those transactions in which no language not appearing on the marketing check
22 notice is used, so that if a language not appearing on the marketing check notice is used in the
23 transaction, the Letter of Agency combined with a marketing check may not be used. We do not
24 believe that it is overly burdensome to require the marketing check notice, which is not lengthy, to
25 appear in English, Spanish, and any other language used in the sales transaction, and that any
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1 perceived burden is outweighed by the consumer protection this section provides to both residential
2 and business customers.

3 We believe that this section clearly delineates the requirements for the use of a Letter
4 of Agency with a marketing check, but in response to the comments, we believe it would gain
5 additional clarity by the addition of specific qualifying language to that effect.

6 **Resolution:** Insert, at the end of the first sentence after “marketing check”, “subject to the
7 following requirements”. Insert the following sentence at the end of this section: “If a
8 Telecommunications Company cannot comply with the requirements of this section, it may not
9 combine a Letter of Agency with a marketing check.”
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11 **1905.D**

12 **Issue:** Qwest comments that specifying that written authorization includes a Letter of
13 Agency is redundant because 1905.A.1 provides for internet enabled authorization with electronic
14 signature.
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16 Staff comments that this section was written to ensure that a reasonable reader
17 understands that electronic authorization, including internet authorizations, are acceptable forms of
18 verification.

19 **Analysis:** This section is necessary to clarify that a Letter of Agency is an acceptable form of
20 verification.

21 Separately, we note that the numbering of this section contains a typographical
22 formatting error requiring correction.
23

24 **Resolution:** Renumber 1905.D.1 as 1905.E. Renumber 1905.D.2 as 1905.E.1 and renumber
25 accordingly.
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1905.F.2

Issue: Qwest comments that this section's prohibition on any financial incentive to "verify" the authorization conflicts with FCC rules, which prohibit a financial incentive to "confirm" a change. Qwest comments that under this section, merely paying the verifying entity appears to pose a problem, and thus conflicts with the FCC rules.

Staff comments that this section prohibits incentives to "verify that . . . change orders are authorized", which prohibits payments based on the third party's determination that an order is authorized, but does not prohibit payments that are neutral as to the determination made by the third party.

Analysis: Qwest's comments seem not to be based on the full text of this section, which clearly states: "The independent third party shall not have any financial incentive to verify that Telecommunications Company change orders are authorized." We fail to see how this section could be interpreted to conflict with the FCC rule, as described by Qwest, that "an independent verifying entity may not have a financial incentive to 'confirm' a change."

Resolution: No change required.

R14-4-1906 – Notice of Change

Issue: AT&T commented that this section should be eliminated because notice to subscribers regarding their telephone service provider is governed by federal Truth-in-Billing requirements. AT&T believes that the provision is confusing to carriers regarding what carrier is responsible for providing the notice, because only the Executing Telecommunications Carrier can make a change in a Subscriber's service. AT&T requests that if the section is retained, that it be modified to allow that the "notice of change be printed in both English and Spanish or in the language the carrier has chosen to use in marketing to the Subscriber."

1 Allegiance comments that this section should be limited to residential customers and
2 not be required in transactions with business customers, stating that the need for bilingual notices
3 arises in the residential market, not the business market, and that the requirement to produce certain
4 notices in both English and Spanish will require significant investment and expense on the part of
5 smaller carriers such as Allegiance.

6 Citizens Communications Company (“Citizens”) comments that this section, which
7 requires an authorized carrier or its billing agent to notify subscribers of changes of service provider
8 in both English and Spanish, is impractical, unnecessary and expensive for its affiliate Navajo
9 Communications, Inc., which has a predominately Native American customer base. Citizens requests
10 that a telecommunications company that provides service in an area that is predominately Native
11 American be required to provide notification in English and appropriate communication for the
12 Native American, and not in Spanish. Citizens has located a call center on Navajo Tribal Lands, and
13 states that it has done so in large part due to the availability of Navajo speakers.
14

15 Cox comments that this section should be clarified to expressly indicate that the notice
16 be sent to the Subscriber. Staff concurred with Cox that “to the Subscriber” should be inserted in this
17 rule after “separate mailing”.
18

19 **Analysis:** Because of the large Spanish-speaking population in Arizona, we believe that the rule
20 as drafted best serves the public interest, for both business and residential customers. Citizens raises
21 a reasonable point, however, and may request a waiver of the applicability of the rule, based on its
22 provision of notification appropriate to its customer base, when the rules become effective.
23

24 Given the definitions of Authorized Carrier and Executing Telecommunications
25 Carrier in these rules, we do not believe that this provision will confuse carriers as to who sends the
26 required notice of change in service provider. This section does not require an Executing
27 Telecommunications Carrier to provide notification to a Subscriber.
28

1 We agree with Cox's proposed language addition to clarify that the referenced
2 "separate mailing" would be sent to the Subscriber. It is already clear that a bill or a bill insert would
3 be sent to the Subscriber.

4 **Response:** Insert "to the Subscriber" after "separate mailing". No further changes required.

5 **R14-4-1907 – Unauthorized Changes**

6 **1907.B**

7 **Issue:** Qwest recommends eliminating the five-business day requirement from this section,
8 stating that it is unrealistic in many circumstances, because a reasonable response time will vary
9 according to the circumstances.
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11 Staff comments that it does not agree with Qwest, and that an Unauthorized Change is
12 a fraud on the consumer that requires an immediate response by a Telecommunications Carrier.

13 **Analysis:** We agree with Staff. Given the circumstances under which compliance with this
14 section would be required, we believe that the timeframe in this rule is very reasonable and fair to the
15 Unauthorized Carrier, and that Telecommunications Carriers should be able to comply within five
16 business days at most.
17

18 **Resolution:** No change required.

19 **1907.C**

20 **Issue:** Qwest comments that although this section requires the Telecommunications
21 Company to remedy an unauthorized change, the Unauthorized Carrier is the responsible party for
22 remedying unauthorized changes. Qwest requests that this section be modified to state: "the
23 Unauthorized Carrier shall:".
24

25 Staff agrees that this provision should be changed so that it is consistent.

26 **Analysis:** We agree with Qwest and Staff.
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1 **Resolution:** Replace “the Telecommunications Company shall” with “the Unauthorized Carrier
2 shall”

3 **1907.C.2**

4 **Issue:** Qwest comments that this section creates inconsistency with the federal rules by
5 absolving subscribers of all unpaid charges for a period of ninety days following a slam, while the
6 FCC rules absolve subscribers of unpaid charges associated with a slam for a period of only thirty
7 days. Qwest believes that this conflict will create administrative problems for telecommunications
8 companies and will lead to subscriber confusion, particularly when slamming complaints involve
9 both interstate and intrastate calls.
10

11 Staff comments that consumers are better served with a 90-day absolution period as
12 embodied in the Arizona statutes and this section.

13 **Analysis:** We agree with Staff, and believe that customers are generally aware of the difference
14 between interstate and intrastate calls and that any differences in absolution periods due to such
15 difference can be easily explained.
16

17 **Resolution:** No change required.

18 **1907.C.3**

19 **Issue:** Qwest comments that this provision departs significantly from the FCC rules, which it
20 believes is prohibited by Arizona law, and creates subscriber confusion. Qwest states that the FCC
21 permits the original carrier to rebill calls, protecting the original carrier against foregone services
22 during the absolution period.
23

24 Staff comments that it does not agree and believes customers are better served with a
25 90-day absolution period during which the carrier cannot rebill the customer.

26 **Analysis:** This section prohibits the original Telecommunications Carrier from billing a
27 Subscriber for charges incurred during the first 90 days of the Unauthorized Carrier’s service, but
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1 does allow the original Telecommunications Company to rebill charges the Subscriber incurred to the
2 Unauthorized Carrier, after the 90 day absolution period, at the original Telecommunications
3 Company's rates. We believe that this is the fairest resolution possible to the unfair situation
4 presented to Arizona consumers by an Unauthorized Change.

5 **Resolution:** No change required.

6 **1907.C.4**

7 **Issue:** AT&T comments that as drafted, this section could allow the original
8 Telecommunications Company to apply the 150 percent credit toward charges incurred during the 90-
9 day absolution period, and that in contrast, section 1907.C.3 prohibits the original
10 Telecommunications Company from billing for charges incurred during the absolution period.
11 AT&T proposed a revision to clarify that any refund from the Unauthorized Carrier is to be applied
12 after the absolution period ends.
13

14 Staff comments that it is concerned that on some occasions Subscribers may pay a bill
15 before they discover a slam, and believes that if this occurs during the 90-day period, the 150 percent
16 credit should still apply.
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18 **Analysis:** This section requires 150 percent of any charges paid by a Subscriber to an
19 Unauthorized Carrier to be applied as a credit to authorized charges by the Authorized Carrier. It
20 does not contain a time limitation. Because section 1907.C.3 prohibits the original
21 Telecommunications Carrier from billing for unauthorized charges incurred during the first 90 days
22 of the Unauthorized Carrier's service, the 150 percent of charges paid to the Unauthorized Carrier
23 would be applied as a credit to the Subscriber's authorized charges. We believe that reading these
24 two sections together already makes it clear that any 150 percent refund from the Unauthorized
25 Carrier is to be applied to the Subscriber's authorized charges.
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27 **Resolution:** No change required.
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1907.D.2

Issue: Qwest comments that it believes that the Commission should not inject itself into credit reporting relationships, which are governed by federal law, and that this section creates conflict with federal agencies charged with administration of the Fair Credit Reporting Act.

Staff comments that it is imperative that Customers be protected from adverse credit reports until disputed charges related to an alleged slam are resolved, and that Qwest has not cited any specific provision that it claims conflicts with this requirement.

Analysis: We agree with Staff.

Resolution: No change required.

1907.E

Issue: AT&T comments that as drafted, this section would allow a customer to persist in “disputing” a charge even after the Commission had determined that the provider change was properly verified under section 1905. AT&T believes that the customer’s obligation to pay should be enforceable (even if disputed by the customer), so long as the change is properly verified under section 1905.

Staff comments that this section provides that the Customer remains obligated to pay any charges that are not disputed, and that if the parties cannot resolve the dispute, they may resort to the procedures of section 1910.

Analysis: We agree with Staff.

Resolution: No change required.

1907.F

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of individual slamming complaints for 24 months, will require companies to enhance data and information systems, and stated that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens requests that the Commission delay the effective date for the rules' applicability for one year to allow time for it to implement the system upgrades necessary to comply with this rule. Citizens orally stated that if a temporary waiver request would be the appropriate avenue for it to obtain relief, that it could make such a request.

Analysis: Citizens is not requesting a change to the rule. If it requires additional time to comply with this rule, Citizens should request a temporary waiver of the applicability of the rule, when the rules become effective.

Response: No change required.

R14-4-1908 – Notice of Subscriber Rights**1908.B.3**

Issue: AT&T comments that this section requires a Telecommunications Company to provide to each of its Subscribers a notice that the Unauthorized Carrier must remove all charges, but that section 1907 does not so require.

Staff comments in response that it is aware that the proposed Notice of Customer Rights has become inconsistent with other provisions of the proposed rules and accordingly recommends that corresponding revisions are made to ensure that customer notices accurately reflect the provisions of the remainder of proposed Article 19. Staff recommends that AT&T's recommendation for this section be adopted.

Analysis: We agree with AT&T and Staff.

Resolution: Delete this section and renumber accordingly.

1908.B.6

Issue: AT&T comments that this section requires a Telecommunications Company to provide to each of its Subscribers a notice that the Original Telecommunications Company may bill the Customer for service provided during the first 90 days of service with the Unauthorized Carrier at the Original Telecommunications Company's rates, but that section 1907 does not so allow.

Qwest also comments that this section directly conflicts with section 1907.C.3.

Staff comments that it is aware that the proposed Notice of Customer Rights has become inconsistent with other provisions of the proposed rules and accordingly recommends that corresponding revisions are made to ensure that customer notices accurately reflect the provisions of the remainder of proposed Article 19. Staff recommends that AT&T's recommendation for this section be adopted.

1 **Analysis:** We agree that this section should be made consistent with section 1907.C.3. This
2 should be accomplished by adding the additional language appearing in section 1907.C.3.

3 **Resolution:** Replace the last sentence of this section with “The original Telecommunications
4 Company may not bill the Subscriber for unauthorized service charges during the first 90 days of the
5 Unauthorized Carrier’s service but may thereafter bill the Subscriber at the original
6 Telecommunications Company’s rates;”

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8 **1908.B.7**

9 **Issue:** AT&T comments that this section requires clarification to make it consistent with its
10 recommended modification of section 1907.C.4.

11 Staff recommends against AT&T’s proposed change to section 1907.C.4, and
12 accordingly recommends against AT&T’s proposed changes to this section.

13 **Analysis:** We believe that our change to section 1908.B.7 described above removes any need for
14 clarification to this section.

15 **Resolution:** No change required.

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17 **1908.B.11**

18 **Issue:** Cox comments that this rule requires a clarification that it applies only to intraLATA
19 and interLATA toll service provider freezes.

20 Staff agrees with the suggested clarification, but recommends that the phrase “long
21 distance” be used instead of the more technical language suggested by Cox.

22 **Analysis:** The clarification Cox proposed is helpful and should be made using the phrase “long
23 distance”.

24 **Resolution:** Insert “long distance” between “Customer’s” and “telecommunications”.
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1908.C.1

Issue: Cox comments that this rule requires a clarification that a Telecommunications Company need only provide the Notice of Subscriber Rights to its own new Customers. Staff comments that it does not share Cox's concern.

Analysis: We believe that Cox's proposed clarification is helpful and should be adopted.

Resolution: Insert "its" between "to" and "new Customers".

1908.C.2

Issue: Qwest believes the language of this section should be broadened to either 1) impose a publication requirement on all telecommunications companies; or 2) require each company to contribute to the cost of a generic notice for all companies. Qwest believes that otherwise, those companies that publish a directory are penalized.

Staff comments that this proposal has already been rejected on a number of occasions.

Analysis: It is important for customers to have access to the information required by this section in the white pages of their telephone directories. We do not believe that provision of this information penalizes Telecommunications Companies that publish a telephone directory or contract for publication of a telephone directory.

Resolution: No change required.

1908.C.3

Issue: AT&T comments that this section's requirement that the notice required by section 1908 be posted on its website would be an onerous burden and would have limited value given that the information at issue here can be made generally available to Arizona consumers from numerous other sources. AT&T states that it does not typically maintain information applicable only to the residents of a specific state, province, or territory on a website because of the high cost of keeping information accurate and current.

Staff comments that it believes a notice advising Arizona subscribers of their Arizona-specific rights is appropriate.

Analysis: We do not believe that the burden of providing this information on a company's website outweighs the benefit of having a notice displayed there advising Arizona subscribers of their Arizona-specific rights.

Resolution: No change required.

1908.C.4

Issue: AT&T asks that the Commission allow the notice of Subscriber rights to be written "in both English and Spanish or in the language the carrier has chosen to use in marketing to the subscriber."

Citizens comments that this section, which requires telecommunications companies to notify customers of their slamming rights in both English and Spanish, is impractical, unnecessary and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native American customer base. Citizens requests that a telecommunications company that provides service in an area that is predominately Native American be required to provide notification in English and appropriate communication for the Native American, and not in Spanish. Citizens has located a call center on Navajo Tribal Lands, and states that it has done so in large part due to the availability of Navajo speakers.

Analysis: Because of the large Spanish-speaking population in Arizona, we believe that this section as drafted best serves the public interest. However, this section does not prevent a company from providing notice written in a language other than English or Spanish that the carrier has chosen to use in marketing to the Subscriber.

Citizens raises a reasonable point. Citizens may request a waiver of the applicability of the rule to its affiliate Navajo Communications, Inc., based on its provision of notification

1 appropriate to its customer base, when the rules become effective. AT&T may also request such a
2 waiver if it believes it appropriate.

3 **Response:** No change required.

4 **R14-4-1909 – Customer Account Freeze**

5 **1909.A**

6 **Issue:** Qwest comments that this section should be modified to apply to local service as well
7 as intraLATA service and interLATA service. Qwest states that this article fails to provide any
8 regulation of local service freezes, leaving carriers to implement them through tariffs.
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10 In response to comments from Qwest and Staff, the definition of “Customer Account
11 Freeze”, section 1901.D, has been deleted.

12 **Analysis:** While it may become necessary in the future to promulgate a rule governing local
13 service freezes, it is not necessary at this time.

14 The deletion of the definition of “Customer Account Freeze” necessitates a
15 conforming change to this section to reflect that it is no longer a defined term.
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17 **Resolution:** Replace “Account Freeze” with “account freeze”. No further change required.

18 **1909.C**

19 **Issue:** Qwest comments that this section should be modified to apply to local service as well
20 as intraLATA service and interLATA service. Qwest states that this article fails to provide any
21 regulation of local service freezes, leaving carriers to implement them through tariffs.

22 **Analysis:** While it may become necessary in the future to promulgate a rule governing local
23 service freezes, it is not necessary at this time.

24 **Resolution:** No change required.
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1909.D

Issue: Qwest comments that this section's requirement for a formal authorization to add or lift a freeze to long distance service conflicts with FCC rules that do not require formal authorization to add or lift a freeze on interLATA or intraLATA service, except for the three-way call verification for removing a freeze.

Staff comments that the additional protections this section offers are necessary to protect consumers and should be adopted.

WorldCom Inc. ("WorldCom") comments that two new sections should be added after this section to provide that electronic authorization may be used to lift a Customer account freeze.

Qwest comments that it opposes WorldCom's request for electronic authorization as a means of verification because without direct contact, a provider cannot ensure that the subscriber is not a victim of slamming, and allowing electronic authorization from third parties would likely increase slamming. Qwest maintains that any means of authorization must come directly from the Subscriber.

Analysis: We agree with Staff that the additional protections this section offers are necessary to protect consumers from slamming.

WorldCom's concerns are adequately addressed in sections 1904 and 1905.

Resolution: No change required.

1909.F

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of Customer Account Freeze authorizations and repeals for 24 months, will require companies to enhance data and information systems, and states that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens requests that the Commission delay the effective date for the rules' applicability for one year to allow time for it to implement the system upgrades necessary to comply with this section. Citizens orally stated that if a temporary waiver request would be the appropriate avenue for it to obtain relief, that it could make such a request.

In response to comments from Qwest and Staff, the definition of "Customer Account Freeze", section 1901.D, has been deleted.

Analysis: Citizens is not requesting a change to this section. If it requires additional time to comply with this rule, Citizens should request a temporary waiver of its applicability, when the rules become effective.

The deletion of the defined term "Customer Account Freeze" necessitates a conforming change to this section to reflect that it is no longer a defined term.

Response: Replace "Account Freeze" with "account freeze" where it occurs in this section. No further change required.

R14-4-1910 – Informal Complaint Process**1910.B.3**

Issue: AT&T suggested that this section, which is nearly identical to section 2008.B.3, should be revised slightly to define precisely when the clock begins ticking on the 5-day response period.

Staff notes that in most cases, the alleged Unauthorized Carrier will receive notice the same day as the Commission because it will often be sent by telephone or electronic mail. Staff recommends adoption of the AT&T proposal to make this section correspond to section 2008.

Analysis: We agree with the clarification proposed by AT&T and Staff.

Resolution: Add “of receipt of notice from the Commission” after “within 5 business days”.

1910.B.4

Issue: Qwest comments that this section raises due process concerns by presuming the existence of an unauthorized change when a company fails to provide supporting documentation within 10 days. Qwest asserts that in such circumstances, the Commission makes a binding decision under an informal complaint process.

Staff comments that it does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to timely respond to an investigative inquiry as an admission and as a rule violation for purposes of Staff’s non-binding written summary of findings pursuant to this rule.

This section clearly applies only to the informal complaint process, and only governs Staff’s responsibility to inform a Telecommunications Company of how Staff must treat a failure to

1 respond in its written summary, under this section. It does not address how the failure to respond
2 would be treated in a hearing on a formal complaint.

3 **Resolution:** No change required.

4 **1910.B.6**

5 **Issue:** Qwest comments that this section should be eliminated, as it repeats the provision
6 contained in 1910.C and the redundancy serves to confuse carriers and subscribers.

7 **Analysis:** We agree with Qwest.

8 **Resolution:** Delete this section and renumber accordingly.

9 **1910.B.7**

10 **Issue:** Qwest comments that this section should be eliminated, as it repeats the provision
11 contained in 1910.D and the redundancy serves to confuse carriers and subscribers.

12 **Analysis:** We agree with Qwest.

13 **Resolution:** Delete this section and renumber accordingly.

14 **1910.B.8**

15 **Issue:** Cox comments that this section's requirement that a failure to provide information
16 requested by Staff or a good faith response within 15 business days of a request will be deemed an
17 admission of a violation of these rules amounts to a procedural denial of due process, particularly
18 when the admitted violation will be made a part of the Staff's nonbinding summary of its review on
19 the informal complaint. Cox comments that a failure to respond would more appropriately be
20 considered, at most, a rebuttable presumption that could be disproved at hearing.

21 Qwest comments that it has serious due process concerns with the informal complaint
22 process because it places the burden of proof on the responding company and establishes a
23 presumption in favor of the Subscriber.
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Staff comments that it does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to timely respond to an investigative inquiry as an admission and as a rule violation for purposes of Staff's non-binding written summary of findings pursuant to this rule.

This section clearly applies only to the informal complaint process, and only governs Staff's responsibility to inform a Telecommunications Company of how Staff must treat a failure to respond in its written summary, under this section. It does not address how the failure to respond would be treated in a hearing on a formal complaint.

Resolution: No change required.

R14-4-1911 – Compliance and Enforcement

Issue: Qwest comments that this section should be deleted, as it restates the penalty statutes contained in the Arizona Revised Statutes. Qwest further comments that the Commission should also adopt the FCC's approach, which considers the willfulness of carriers in assigning penalties, and that the severity of penalties should vary according to the level of carrier culpability.

Staff comments that it is appropriate to clarify the procedures for compliance and enforcement that apply to this article.

Analysis: We agree with Staff.

Resolution: No change required.

R14-4-1914 – Script Submission

Issue: Cox comments that this section should be clarified to limit submissions to scripts used to directly solicit new services from individual consumers in Arizona.

AT&T comments that a carrier should not be obliged to turn over all scripts, and that filing the scripts under seal does not resolve the problem of releasing valuable internal information from its control. AT&T stated its willingness to provide responsive proprietary scripts to the Commission if needed in a complaint proceeding. AT&T believes that this section's requirement as written is overbroad and includes no clear purpose for requiring submission of scripts. AT&T recommends that this section be eliminated.

WorldCom comments that scripts should be filed annually except if a new launch is initiated that causes the creation of a whole new set of scripts. WorldCom also commented that it would like clarification that while the Commission may review scripts so that it has notice of what and how telecommunications products are being sold, it will not mandate that a specific script be used and will not re-write, re-script or direct a company's marketing efforts as long as no fraudulent or misleading statements are stated or implied. WorldCom urges that the Commission set criteria for types of scripts that could cause punitive actions by the Commission.

Allegiance comments that this section should apply only to scripts provided to third party marketing agents. Allegiance further comments that this section should be clarified to require that script submissions only need to be made annually or after substantial amendment to the script, that the Commission is not seeking pre-approval rights for such scripts, and that scripts are not required.

Qwest comments that filing scripts under seal relieves few confidentiality concerns, because scripts remain subject to Staff review, and any problems the Commission finds upon reviewing the scripts will result in the scripts losing their confidential status. Qwest further comments

1 that the filing of a script and the right of the Director of the Utilities Division to review it constitutes
2 an unlawful prior restraint upon speech, and recommends elimination of this rule. Qwest comments
3 that it supports the objections made by AT&T, WorldCom and Cox that this section is overbroad and
4 recommends that the Commission require annual filings of only those scripts relating to marketing
5 practices.

6 On July 12, 2002, following the public comment hearing on these rules, Staff filed
7 Supplemental Comments in response to issues raised regarding the breadth of this section as
8 originally proposed. Staff proposes that the language of this section be clarified to apply to sales or
9 marketing scripts that involve proposing a change in Telecommunications Company or responding to
10 an inquiry regarding a possible change in Telecommunications Company. Staff further proposes a
11 clarification to this section that requires such scripts to be filed 90 days from the day the rules are
12 published in a notice of final rulemaking in the Arizona Administrative Register, on April 15 of each
13 year, whenever directed to do so by the Director of the Commission's Utilities Division, and
14 whenever a material change to a script occurs or a new script is used that is materially different from
15 a script on file.
16

17 On July 24, 2002, Cox and AT&T filed responses to Staff's Supplemental Comments
18 on this section. Cox states that Staff's proposed revisions resolve some of the issues raised and are a
19 significant improvement. AT&T continues to object to required submission of confidential and
20 proprietary scripts where there is no allegation of wrongdoing or consumer confusion, stating that this
21 section imposes costly and unnecessary compliance burdens on companies and that the Commission
22 has authority to request script submission in the course of a complaint proceeding.
23

24 **Analysis:** This section puts in place a mechanism for monitoring Telecommunications
25 Companies' scripts for fraudulent practices that are known to occur in the industry and are prohibited
26 by this article, and provides that Staff may initiate a formal complaint to review any script. This
27
28

1 section does not require that scripts be pre-approved by the Commission or require that scripts be
2 used at all.

3 The prevention of consumer fraud by public service corporations upon Arizona
4 consumers constitutes a compelling state interest that outweighs the burdens of compliance
5 referenced in the comments. The clarifications proposed by Staff in its Supplemental Comments
6 reasonably address the comments regarding the breadth of this section. With the clarifications, the
7 requirements of this section are narrowly tailored to apply only to those scripts that would be used in
8 the types of customer contacts where misleading or improper marketing activities are known to have
9 occurred.
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11 **Resolution:** Insert the language proposed by Staff in its Supplemental Comments filed on July 12,
12 2002.

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**ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER
CHARGES**

R14-4-2001 – Definitions

2001.A

Issue: The Wireless Group recommends that the definition of “Authorized Carrier” be deleted from this section because it is not relevant to Article 20 and Article 20 does not make use of the term. Staff supports the Wireless Group’s recommendation.

Analysis: The definition of “Authorized Carrier” should be deleted from this section because it is not relevant to Article 20 and Article 20 does not make use of the term.

Resolution: Delete the definition of “Authorized Carrier” from this section and renumber accordingly.

2001.D

Issue: Cox comments that the term “Subscriber” should be modified to exclude business customers who receive telecommunications services under a written contract, because the rules may not be appropriate in business service situations where there is a written contract between the Telecommunications Company and the business customer.

Staff comments that all customers should be protected by the proposed rules.

Analysis: It is possible for Telecommunications Companies to obtain the authorization and verification that the rules require by contract with its business customers.

Resolution: No change required.

2001.F - Definition of Unauthorized Charge

Issue: The Wireless Group states that it generally supports the exemption in this definition of “one-time pay-per-use charges or taxes and other surcharges that have been authorized by law to be passed through to the customer,” but that the Commission lacks authority to regulate wireless carrier rates and thus to determine whether a particular charge is “authorized by law to be passed through” to customers. The Wireless Group believes that the Commission should either exempt all surcharges that wireless carriers place on their bills from the definition of an Unauthorized Charge, or clarify that only surcharges prohibited by law should be included within the definition of Unauthorized Charge. The Wireless Group asserts that because the Commission does not have the authority to prohibit wireless carriers from passing through charges to their customers, it lacks authority to treat any surcharge as unauthorized.

Qwest joins the Wireless Group in recommending that the Commission clarify that only charges prohibited by law are incorporated in the definition of Unauthorized Charges. Qwest states that many legal charges, including charges by tariff, price list, and surcharges, are not expressly authorized, and are thus apparently included under the cramming rules, but that because these charges are not prohibited by law, they cannot be included within the scope of cramming regulations.

Staff states that because the Commission may not regulate the rates of wireless carriers, that any surcharge imposed by the wireless carrier would be authorized by law, and thus would fall under the current wording of the condition. Staff does not believe that a change is necessary.

Analysis: We agree with Staff.

Resolution: No change required.

2001.F - Delivery of Wireless Phones

Issue: The Wireless Group comments that this section should be modified to specify that it applies only to unsolicited delivery of a wireless phone. Staff agrees and recommends that the rule should be clarified to apply to “the unsolicited delivery” of a wireless phone.

Analysis: We agree that the rule should be clarified to apply to “the unsolicited delivery” of a wireless phone.

Resolution: Replace “a wireless phone delivered” with “the unsolicited delivery of a wireless phone”.

R14-4-2002 – Purpose and Scope

Issue: Qwest comments that this section should be eliminated entirely. Qwest states that rules are not intended to merely state a purpose. Qwest asserts that a purpose statement violates A.R.S. § 41-1001.17, which limits a rule to a statement that actually “interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” Qwest further comments that if the Commission chooses to adopt this rule, it should address unauthorized charges on bills imposed by all entities, rather than just telecommunications companies.

Staff comments that it disagrees with Qwest’s legal analysis, and asserts that a statement of purpose and scope gives guidance as to how the subsequent rules are to be interpreted. Staff believes that in this respect, this section is more like a definition than the type of statement prohibited by A.R.S. § 41-1001.17.

Analysis: We believe that this section as proposed complies with A.R.S. § 41-1001.17 in that it is a Commission statement of general applicability that prescribes Commission policy. However, we also believe that this section would gain clarity by replacing “are intended to” with “shall be interpreted to”.

Resolution: Replace “are intended to” with “shall be interpreted to”.

R14-4-2005 – Authorization Requirements**2005.A.3**

Issue: The Wireless Group comments that most telecommunications customers are sophisticated enough to understand that when they purchase services, they will be required to pay for the service, and this rule is overbroad and unnecessary.

Qwest believes that it should be able to assume that the subscriber expects to see charges on the bill.

The Wireless Group and Qwest recommend deletion of the requirement of this rule that a Telecommunications Company obtain from the Subscriber explicit acknowledgement that the charges will be on the Customer's bill.

Staff comments that it is important that Subscribers are informed of the effect that a new product or service will have on their bill, and does not support eliminating a requirement for customer acknowledgement of proposed charges. Staff notes that the explicit subscriber acknowledgement could be a simple statement during a phone contact with the company.

Analysis: We agree that a Telecommunications Company can easily obtain the acknowledgement that the charges will be billed, and that this acknowledgement should certainly be obtained. This requirement is necessary to achieve the objectives of these rules, is therefore not overbroad, and should not be deleted.

Resolution: No change necessary.

2005.B

Issue: The Wireless Group states that Telecommunications Companies should only be required to offer to Subscribers the information required by this rule upon request. Qwest comments that they should be obligated only to providing a clear, non-misleading description of the product or service, and that a description should only be required for those products or services requested. Qwest also recommends that the requirement that the company describe how the charge will appear on the Customer's bill be deleted, because the requirement will add unnecessary time to sales calls.

The Wireless Group asserts that many customers do not want to be inundated with information when they sign up for a service, but that they might find it useful to know that a Telecommunications Company has an obligation to provide more detailed information if they request it. Staff points out that the rule only applies to products and services offered during the course of the contact with the customer, and not to all of a company's products and services.

Analysis: Subscribers should understand how charges will appear on their bill prior to making a decision to order a product or service, and this understanding could lead to a reduction in the time companies might be required to spend remedying problems resulting from under-informed Subscribers. The text of this rule applies only to products offered to the Subscriber, and is necessary to achieve the objectives of the rules.

Resolution: No change required.

2005.B.1

Issue: Qwest comments that the obligation of the provider should be limited to providing a clear, non-misleading description of the product or service, and that although in many cases an explanation may be desirable or useful, requiring an explanation at the point of sale in every case is not appropriate. Qwest comments that similarly, representatives should be providing a "statement" of applicable charges, not an "explanation."

1 **Analysis:** Customers deserve an explanation of products or services offered in order to be able to
2 make an informed decision whether to buy the product or service.

3 **Resolution:** No change required.

4 **2005.B.2**

5 **Issue:** Qwest suggests adding “for each product or service requested” at the end of this
6 section, and that the representative should not be required to provide the charges of every service or
7 product offered, only those that the subscriber requests or agrees to buy.

8 **Analysis:** An explanation of a product or service should include the charges for the service.

9 **Resolution:** No change required.

10 **2005.B.3**

11 **Issue:** Qwest comments that the requirement that representatives explain “how the charge
12 will appear on the customer’s bill” should be deleted. Qwest believes that it is only critical that the
13 subscriber receive a description of the service or product and a statement of the charges and that an
14 explanation of how the charge will appear only adds unnecessary time to subscriber contact and
15 increases hold times.

16 **Analysis:** Customers should be informed of how the charge will appear on their bill.

17 **Resolution:** No change required.

18 **2005.C**

19 **Issue:** This rule requires that authorizations shall be given in all languages used at any point
20 in the sales transaction, and that the Telecommunications Company must offer to conduct the
21 transaction in English or Spanish and must comply with the Customer’s choice. The Wireless Group
22 believes that the requirement should be modified to require companies to communicate with
23 customers in English or Spanish upon request, and that this rule should not apply to transactions that
24 take place in retail stores because Spanish-speaking employees may not be available there. In
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1 addition, the Wireless Group believes the rule should be clarified to state that companies are not
2 required to conduct transactions in any language, but only in the languages that the company uses to
3 solicit business.

4 Qwest comments that Telecommunications Companies should only be required to
5 provide notice in the Subscriber's choice of language, and that requiring notice to be written in any
6 language used at any point in the sales transaction will result in a significant cost increase.

7 Citizens comments that this rule is impractical, unnecessary and expensive for its
8 affiliate Navajo Communications, Inc., which has a predominately Native American customer base.
9 Citizens requests that a telecommunications company that provides service in an area that is
10 predominately Native American be required to provide notification in English and appropriate
11 communication for the Native American, and not in Spanish. Citizens has located a call center on
12 Navajo Tribal Lands, and stated that it did so in large part due to the availability of Navajo speakers.
13

14 Allegiance comments that this section should be limited to residential customers and
15 not be required in transactions with business customers, stating that the need for bilingual notices
16 arises in the residential market, not the business market, and that the requirement to produce certain
17 notices in both English and Spanish will require significant investment and expense on the part of
18 smaller carriers such as Allegiance.
19

20 Cox comments that the rule appears to mandate that the Telecommunications
21 Company have the ability to conduct a sales transaction in Spanish on the spot, and would place an
22 unreasonable burden on the company's staffing requirements. Cox states that it would be more
23 reasonable for a company to delay a sales transaction if it could not conduct that transaction in
24 Spanish.
25

26 Staff comments that if a Subscriber were to contact a company employing a language
27 not understood by the company's representatives, that the company's only obligation is not to
28

complete the transaction since the company would not be able to comply with the rule's notice and authorization requirements.

Analysis: This section requires that if the Telecommunications Company employs any language in the sales transaction, that the required authorizations be given in that language. This is a valid consumer protection requirement for both residential and business customers, and the protections afforded by this requirement merit the expense of obtaining a valid authorization. We agree with the comments of Cox and Staff that that it would be more reasonable for a company to delay a sales transaction if it could not conduct that transaction in Spanish, or in any other language used in the course of the transaction, for that matter. We believe that a minor addition to this section may be required to clarify this point.

Citizens raises a reasonable point in relation to its affiliate Navajo Communications, Inc. Because of the large Spanish-speaking population in Arizona, we believe that the rule as drafted best serves the public interest, but that when the rules become effective, Citizens may request a waiver of the applicability of the rule for its affiliate Navajo Communications, Inc., based on the fact that it will provide the required notification in a language appropriate to the affiliate's customer base.

Resolution: Insert "or shall not complete the transaction" after "must comply with the Customer's choice".

2005.D

Issue: Qwest comments that this provision should only apply when carriers attempt to sell a line product or service. Cox comments that this section should be deleted to avoid the potential difficulties and burdens that would be imposed by this section's requirement that companies inform a Subscriber of the cost of "basic local exchange telephone service" as the term is defined in A.A.C. R14-2-1201.6. Cox comments that alternatively, the concerns addressed by this section would still be

1 met by deleting the first sentence of this section. AT&T urges the Commission to eliminate the first
2 sentence of this section, and that if this section is retained, that it not apply to business customers.

3 In its Supplemental Comments filed on July 12, 2002, Staff proposes changes to the
4 first sentence of this section to make this rule applicable only to contacts in which a
5 Telecommunications Company offers to establish service or during which a person requests the
6 establishment of service. Cox comments in response that it would still prefer the elimination of the
7 first sentence of the section. AT&T comments in response to Staff's proposed clarification that the
8 first paragraph of this section should be further clarified to include the word "residential"
9 immediately before "service" in both places it appears.
10

11 **Analysis:** This section addresses the Commission's concern that persons requesting or being
12 offered residential service be informed of the lowest-cost telephone service available. Staff's
13 proposed modification to this section provides clarity and should be adopted. AT&T's proposed
14 modification also provides clarity. A.A.C. R14-2-1201.6, which is referenced in the first sentence of
15 this section, refers to "1-party residential service with a voice grade line." Therefore, the addition of
16 the word "residential" as clarification to the first sentence of this section as recommended by AT&T
17 would be helpful. The remaining sentences of this section apply to companies' descriptions of any
18 product, service, or plan, and the Commission does not intend them to be limited to descriptions of
19 residential products, services, or plans.
20

21 **Resolution:** Replace "during which" with "in which". Replace "sell a product or service" with
22 "establish residential service". Replace "a Subscriber requests to buy a product or service" with "a
23 person requests the establishment of residential service".
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2005.E

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of individual subscriber service authorizations for 24 months, will require companies to enhance data and information systems, and states that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens requested that the Commission delay the effective date for the rules' applicability for one year to allow time for it to implement the system upgrades necessary to comply with this rule. Citizens orally stated that if a temporary waiver request would be the appropriate avenue for it to obtain relief, that it could make such a request.

Analysis: Citizens is not requesting a change to the rule. If it requires additional time to comply with this rule, Citizens should request a temporary waiver of the applicability of the rule, when the rules become effective.

Response: No change required.

R14-4-2006 – Unauthorized Charges**2006.A.5**

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of unauthorized charges for 24 months, will require companies to enhance data and information systems, and stated that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens requested that the Commission delay the effective date for the rules'

1 applicability for one year to allow time for it to implement the system upgrades necessary to comply
2 with this rule. Citizens orally stated that if a temporary waiver request would be the appropriate
3 avenue for it to obtain relief, that it could make such a request.

4 Qwest comments that its current practice is to record information regarding a
5 complaint on the individual Subscriber's record, where all information pertaining to the Subscriber's
6 account is currently maintained, and that this is the most efficient and reasonable means to record
7 such information. Qwest's comment does not request a change to this section.

8 **Analysis:** If it requires additional time to comply with this rule, Citizens should request a
9 temporary waiver of the applicability of the rule when the rules become effective.
10

11 **Response:** No change required.

12 **2006.C.1**

13 **Issue:** AT&T comments that this section is very similar to section 1907.D.1, which allows a
14 Telecommunications Company to disconnect service if "requested by the Subscriber," and believes
15 that this section should be made consistent with section 1907.D.1.
16

17 **Analysis:** We agree with AT&T.

18 **Resolution:** Insert "unless requested by the Subscriber" after "alleged Unauthorized Charge".

19 **2006.C.2**

20 **Issue:** Qwest comments that it believes that the Commission should not inject itself into
21 credit reporting relationships, which are governed by federal law, and that this section creates conflict
22 with federal agencies charged with administration of the Fair Credit Reporting Act. Qwest asserts
23 that this section should be deleted.
24

25 **Analysis:** It is imperative that Customers be protected from adverse credit reports until disputed
26 charges related to an alleged Unauthorized Charge are resolved. Qwest has not cited any specific
27 provision that it claims conflicts with this requirement.
28

1 **Resolution:** No change required.

2 **R14-4-2007 – Notice of Subscriber Rights**

3 **2007.C.1**

4 **Issue:** The Wireless Group states that the requirements of this rule to include name, address,
5 and telephone number of the Telecommunications Company is burdensome and unnecessary in light
6 of federal requirements. Qwest comments that a toll-free number should be sufficient and that
7 providing its address is burdensome, unnecessarily costly and should be eliminated from the rule.

8 **Analysis:** Any burden of providing this information is outweighed by the need for Arizona
9 consumers to have this information.
10

11 **Resolution:** No change required.

12 **2007.C.5**

13 **Issue:** Qwest comments that this section's allowance of 15 days to complete the process of
14 investigating unauthorized charges, resolving the complaint, and refunding or crediting the charge,
15 directly conflicts with proposed R14-2-2006.A.3, which provides two billing periods to refund or
16 credit an unauthorized charge. Qwest recommends that to maintain consistency, this section should
17 be modified to allow two billing periods for refund or credit.
18

19 AT&T provides similar comments, stating that 15 days is not sufficient to investigate
20 a complaint, communicate with necessary witnesses, obtain resolution and provide a refund or credit
21 to the customer.

22 **Analysis:** This section should be made consistent with section 2006.A.3.

23 **Resolution:** Replace "Unauthorized Charges as promptly as reasonable business practices permit,
24 but no later than 15 days from the Subscriber's notification" with "any Unauthorized Charge. If any
25 Unauthorized Charge is not refunded or credited within two billing cycles, the Telecommunications
26

1 Company shall pay interest on the amount of any Unauthorized Charges at an annual rate established
2 by the Commission until the Unauthorized Charge is refunded or credited”.

3 **2007.D**

4 **Issue:** The Wireless Group comments that many customers do not keep materials that are
5 provided to them at the time service is initiated, and that it is questionable whether customers would
6 have the notice of subscriber rights at the time they have a complaint. The Wireless Group proposes
7 that this rule be modified to permit Telecommunications Companies to place an abbreviated form of
8 the notice of subscriber rights in periodic bill messages instead of providing the notice at the time
9 service is initiated. The Wireless Group believes that its recommended change to the rule would
10 allow companies to avoid the cost and burden of producing Arizona-specific printed material for new
11 customers while at the same time increasing the likelihood that all customers will have the
12 information when they need it.
13

14 Allegiance comments that this section should be limited to residential customers and
15 not be required in transactions with business customers, stating that the need for bilingual notices
16 arises in the residential market, not the business market, and that the requirement to produce certain
17 notices in both English and Spanish will require significant investment and expense on the part of
18 smaller carriers such as Allegiance.
19

20 Staff comments that the costs associated with providing Arizona consumers
21 information on their legal rights in Arizona is a prudent cost for an Arizona public service company.
22

23 **Analysis:** We agree with Staff that the costs associated with providing Arizona consumers,
24 including businesses, information on their legal rights in Arizona is a prudent cost for an Arizona
25 public service company. The information required by this section should be provided at the time
26 service is initiated.

27 **Resolution:** No change required.
28

2006.D.2

Issue: Qwest believes the language of this section should be broadened to either 1) impose a publication requirement on all telecommunications companies; or 2) require each company to contribute to the cost of a generic notice for all companies. Qwest believes that otherwise, those companies that publish a directory are penalized.

Analysis: It is important for customers to have access to the information required by this section in the white pages of their telephone directories. We do not believe that provision of this information penalizes Telecommunications Companies that publish a telephone directory or contract for publication of a telephone directory.

Resolution: No change required.

2007.D.3

Issue: AT&T comments that this section's requirement that the notice required by section 2007 be posted on its website would be an onerous burden and would have limited value given that the information at issue here can be made generally available to Arizona consumers from numerous other sources. AT&T states that it does not typically maintain information applicable only to the residents of a specific state, province, or territory on a website because of the high cost of keeping information accurate and current.

Analysis: We do not believe that the burden of providing this information on a company's website outweighs the benefit of having a notice displayed there advising Arizona subscribers of their Arizona-specific rights.

Resolution: No change required.

2007.D.4

Issue: Citizens comments that this rule, which requires telecommunications companies to notify customers of their cramming rights in both English and Spanish, is impractical, unnecessary and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native American customer base. Citizens requests that a telecommunications company that provides service in an area that is predominately Native American be required to provide notification in English and appropriate communication for the Native American, and not in Spanish. Citizens has located a call center on Navajo Tribal Lands, and stated that it has done so in large part due to the availability of Navajo speakers.

Analysis: Citizens raises a reasonable point. Because of the large Spanish-speaking population in Arizona, we believe that the rule as drafted best serves the public interest, but that Citizens may request a waiver of the applicability of the rule, based on its provision of notification appropriate to its customer base, when the rules become effective.

Response: No change required.

R14-4-2008 – Informal Complaint Process**2008**

Issue: Qwest comments that it has serious due process concerns with the informal complaint process because it places the burden of proof on the responding company and establishes a presumption in favor of the Subscriber.

Staff comments that it does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to

1 timely respond to an investigative inquiry as an admission and as a rule violation for purposes of
2 Staff's non-binding written summary of findings pursuant to this rule.

3 This section clearly applies only to the informal complaint process, and only governs
4 Staff's responsibility to inform a Telecommunications Company of how Staff must treat a failure to
5 respond in its written summary, under this rule. The rule does not address how the failure to respond
6 would be treated in a hearing on a formal complaint.

7 **Resolution:** No change required.

8 **2008.B.3**

9
10 **Issue:** The Wireless Group comments that the Commission should provide
11 Telecommunications Companies with sufficient time to research and resolve complaints once they
12 are filed with the Commission. The Wireless Group proposes that the timeframe in this rule be
13 changed from 5 days to 10 days.

14 **Analysis:** We believe that the rule as proposed allows a reasonable timeframe for a prompt
15 response to a regulatory inquiry.

16 **Resolution:** No change required.

17 **2008.B.4**

18
19 **Issue:** The Wireless Group states that the Commission should provide Telecommunications
20 Companies with sufficient time to research and resolve complaints once they are filed with the
21 Commission. The Wireless Group proposes that the timeframe in this rule be changed from 10
22 business days to 20 business days.

23 **Analysis:** We believe that the rule as proposed allows a reasonable timeframe for a prompt
24 response to a regulatory inquiry.

25 **Resolution:** No change required.

2008.B.5

Issue: The Wireless Group states that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission. The Wireless Group proposes that the timeframe in this rule be changed from 10 business days to 20 business days.

Analysis: We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry.

Resolution: No change required.

2008.B.6

Issue: This section repeats the provision contained in 2008.C.

Analysis: This redundancy may confuse carriers and subscribers.

Resolution: Delete this section and renumber accordingly.

2008.B.7

Issue: This section repeats the provision contained in 2008.D.

Analysis: This redundancy may confuse carriers and subscribers.

Resolution: Delete this section and renumber accordingly.

2008.B.8

Issue: The Wireless Group comments that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission. The Wireless Group proposes that the timeframe in this section be changed from 15 business days to 25 business days.

Cox comments that this section's requirement that a failure to provide information requested by Staff or a good faith response within 15 business days of a request will be deemed an admission of a violation of these rules amounts to a procedural denial of due process, particularly when the admitted violation will be made a part of the Staff's nonbinding summary of its review on the informal complaint. Cox comments that a failure to respond would more appropriately be considered, at most, a rebuttable presumption that could be disproved at hearing.

Staff does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to timely respond to an investigative inquiry as an admission and as a rule violation for purposes of Staff's non-binding written summary of findings pursuant to this rule.

This rule section clearly applies only to the informal complaint process, and only governs Staff's responsibility to inform a Telecommunications Company of how Staff must treat a failure to respond in its written summary, under this section. It does not address how the failure to respond would be treated in a hearing on a formal complaint.

Resolution: No change required.

2008.C

Issue: The Wireless Group proposes that the timeframe in this rule be changed from 30 days to 30 business days. The Wireless Group states that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission.

Analysis: We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry.

Resolution: No change required.

R14-4-2009 – Compliance and Enforcement

Issue: Qwest comments that this section essentially restates the penalty statutes contained in the Arizona Revised Statutes, that it is therefore redundant, and should be eliminated.

Staff commented that it believes it is appropriate to clarify the procedures for compliance and enforcement that apply to this article.

Analysis: We agree with Staff.

Resolution: No change required.

2009.A

Issue: The Wireless Group recommends that this provision should be made effective only when Staff is reviewing a specific complaint.

Analysis: The Wireless Group believes that this provision could be overbroad if it is applicable when Staff is not reviewing a specific complaint. We do not believe that this requirement, which applies to informal investigations conducted by Staff, is overbroad.

Resolution: No change required.

R14-4-2012 – Script Submission

Issue: The Wireless Group comments that the obligation for all Telecommunications Companies to file a copy of all of their scripts is highly burdensome and unnecessary, and should be eliminated, or alternatively should be restricted to scripts involving a solicitation of business such as outbound telemarketing and only if it is necessary to resolve a specific complaint. The Wireless Group believes that this requirement would be burdensome both to companies and to the Commission, and argued that some of the information contained in scripts used by competitors in an extremely competitive marketplace, such as wireless carriers, is confidential and proprietary, requiring filing of the majority of scripts under seal.

Cox comments that this section should be clarified to limit submissions to scripts used to directly solicit new services from individual consumers in Arizona.

AT&T stated its willingness to provide responsive proprietary scripts to the Commission if needed in a complaint proceeding. AT&T believes that this section's requirement as written is overbroad and includes no clear purpose for requiring submission of scripts. AT&T recommends that this section be eliminated.

WorldCom commented that scripts should be filed annually except if a new launch is initiated that causes the creation of a whole new set of scripts. WorldCom also comments that it would like clarification that while the Commission may review scripts so that it has notice of what and how telecommunications products are being sold, but that it will not mandate that a specific script be used and will not re-write, re-script or direct a company's marketing efforts as long as no fraudulent or misleading statements are stated or implied. WorldCom urges that the Commission set criteria for types of scripts that could cause punitive actions by the Commission.

Allegiance comments that this section should apply only to scripts provided to third party marketing agents. Allegiance further comments that this section should be clarified to require

1 that script submissions only need to be made annually or after substantial amendment to the script,
2 that the Commission is not seeking pre-approval rights for such scripts, and that scripts are not
3 required.

4 Qwest comments that production of these scripts raises confidentiality issues. Qwest
5 states that any problems found by the Commission upon reviewing the scripts will require the
6 Commission to use the confidential information, and in addition, the filing of a script and the right of
7 the Director of the Utilities Division constitutes an unlawful, prior, restraint upon speech. Qwest
8 therefore recommends elimination of this section. Qwest comments that it supports the objections
9 made by AT&T, WorldCom and Cox that this section is overbroad, and recommends that the
10 Commission require annual filings of only those scripts relating to marketing practices.
11

12 On July 12, 2002, following the public comment hearing on these rules, Staff filed
13 Supplemental Comments in response to issues regarding this section. Staff proposes that the
14 language of this rule be clarified to apply to sales or marketing scripts that involve an offer to sell a
15 product or service, including all scripts for unrelated matters that include a prompt for workers to
16 offer to sell a product or service. Staff further proposes a clarification to this section that requires
17 such scripts to be filed 90 days from the day the rules are published in a notice of final rule making in
18 the Arizona Administrative Register, on April 15 of each year, whenever directed to do so by the
19 Director of the Commission's Utilities Division, and whenever a material change to a script occurs or
20 a new script is used that is materially different from a script on file.
21

22 On July 24, 2002, Cox, the Wireless Group and AT&T filed responses to Staff's
23 Supplemental Comments on this section. Cox states that Staff's proposed revisions resolve some of
24 the issues raised and are a significant improvement. AT&T continues to object to required
25 submission of confidential and proprietary scripts where there is no allegation of wrongdoing or
26 consumer confusion, stating that this section imposes costly and unnecessary compliance burdens on
27
28

1 companies and that the Commission has authority to request script submission in the course of a
2 complaint proceeding. The Wireless Group still believes that this section, even with the proposed
3 clarifications, would be unduly burdensome, and that the wireless industry sales practices are already
4 subject to consumer protection laws. The Wireless Group believes that a requirement that scripts be
5 provided to Staff in connection with actual complaints or in response to a specific request for review
6 from the Commission is a more appropriate balancing of benefit against burden than is the annual
7 submission of marketing scripts.

8 **Analysis:** This section puts in place a mechanism for monitoring Telecommunications
9 Companies' scripts for fraudulent practices that are known to occur in the industry and are prohibited
10 by this article, and provides that Staff may initiate a formal complaint to review any script. This
11 section does not require that scripts be pre-approved by the Commission, or require that scripts be
12 used at all.

13
14 The prevention of consumer fraud by public service corporations upon Arizona
15 consumers constitutes a compelling state interest that outweighs the burdens of compliance
16 referenced in the comments. The clarifications proposed by Staff in its Supplemental Comments
17 reasonably address the comments regarding the breadth of this section. With the clarifications, the
18 requirements of this section are narrowly tailored to apply only to those scripts that would be used in
19 the types of customer contacts where misleading or improper marketing activities are known to have
20 occurred.

21
22 **Resolution:** Insert the clarification language proposed by Staff in its Supplemental Comments filed
23 on July 12, 2002. No further change required.
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